

KANSAS INSURANCE DEPARTMENT
Notice of Hearing on Proposed
Administrative Regulation

A public hearing will be conducted at 1:30 p.m., January 23, 2012, in the third floor conference room, Kansas Insurance Department, 420 S.W. 9th, Topeka, Kansas, to consider the adoption of a proposed rule and regulation.

The 60-day notice of the public hearing shall constitute a public comment period for the purpose of receiving written public comments on the proposed rule and regulation. All interested parties may submit written comments prior to the hearing to John Wine, Kansas Insurance Department, 420 S.W. 9th, Topeka, Kansas, 66612-1678, via facsimile at 785-291-3673, or via email at jwine@ksinsurance.org. All interested parties will be given a reasonable opportunity to present their views orally on the adoption of the proposed regulation during the hearing.

A summary of the proposed regulation and its economic impact follows.

K.A.R. 40-4-42c. Standard external review procedures. This proposed amendment clarifies to whom notice must be given about providing additional information for an external review organization to consider when reviewing denials of coverage for experimental or medically unnecessary procedures. The proposed amendment would also specify that external review organizations must forward a copy of any additional information provided to the insurer or its designee.

Any external review organization not already complying with the proposed amendment would have minimal economic impact resulting from forwarding the specified information.

There will be little or no economic impact on the Kansas Insurance Department, consumers, small businesses, or other governmental agencies.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the economic impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least 5 working days in advance by contacting John Wine at (785) 296-7847 or via email at jwine@ksinsurance.org. Any individual desiring a copy of this regulation and/or the policy and procedure that is being adopted by reference, if applicable, may obtain a copy from our website, www.ksinsurance.org, under the Legal Issues link or by contacting John Wine by phone at (785)296-7847 or via email at jwine@ksinsurance.org. The charge for copies is fifty cents per page.

40-4-42c. Standard external review procedures. (a) At the time a request for external review is accepted pursuant to K.A.R. 40-4-42b, an external review organization that has been approved pursuant to ~~L. 1999, Ch. 162, Sec. 8~~ K.S.A. 40-22a15, and amendments thereto, shall be assigned by the commissioner to conduct the external review.

(b) In reaching a decision, the assigned external review organization shall not be bound by any decisions or conclusions reached during the insurer's utilization review process as set forth in ~~K.S.A. 40-22a01 and L. 1999, Ch. 162, Secs. 6 through 9~~ K.S.A. 40-22a13 through 40-22a16, and amendments thereto, or the insurer's internal grievance process.

(c) ~~Within seven business days after the date of receipt of~~ The notice provided in K.A.R. 40-4-42b, shall notify both the insurer or its designee utilization review organization, ~~or~~ and the insured or the insured's authorized representative ~~may~~ that any of these persons may, within seven business days after the receipt of the notice, provide the assigned external review organization with additional documents and information that ~~they wish~~ the person wants the assigned external review organization to consider in making its decision. Within one business day of receipt of any additional documents or information from the insured or the insured's authorized representative, the assigned external review organization shall forward a copy of these documents or this information to the insurer or its designee utilization review organization.

(d) Failure by the insurer to provide the documents and information within the time specified in ~~L. 1999, Ch. 162, Sec. 7(g)~~ K.S.A. 40-22a14(g), and amendments thereto, shall not delay the conduct of the external review.

~~(e)(1)~~ The assigned external review organization shall review all of the information and documents received pursuant to subsection (c) ~~of this regulation~~ and any other information submitted in writing by the insured or the insured's authorized representative pursuant to K.A.R. 40-4-42b.

~~(2) Upon receipt of any information submitted by the insured or the insured's authorized representative pursuant to K.A.R. 40-4-42b, the information shall be forwarded to the external review organization and the insurer.~~

(f)(1) Upon receipt of the information required to be forwarded pursuant to ~~paragraph (e)(2) of this regulation~~ subsection (e), the insurer may reconsider its adverse decision that is the subject of the external review.

(2) Reconsideration by the insurer of its adverse decision as provided in paragraph (f)(1) ~~of this regulation~~ shall not delay or terminate the external review.

(3) The external review may be terminated only if the insurer reconsiders its adverse decision and decides to provide coverage or payment for the health care service that is the subject of the adverse decision.

(4)(A) Immediately upon making the decision to reverse its adverse decision as provided in paragraph (f)(3) ~~of this regulation~~, the insurer shall notify, in writing, the insured or the insured's authorized representative, the assigned external review organization, and the commissioner of the insurer's decision.

(B) The assigned external review organization shall terminate the external review upon receipt of the notice from the insurer sent pursuant to paragraph (f)(4)(A) ~~of this regulation~~.

(g) In addition to the documents and information provided pursuant to subsection (c) of this regulation, the assigned external review organization, to the extent that the documents or information is available, shall consider the following in reaching a decision:

- (1) The insured's pertinent medical records;
- (2) the attending health care professional's recommendation;
- (3) consulting reports from appropriate health care professionals and other documents submitted by the insurer, the insured, the insured's authorized representative, or the insured's treating provider;
- (4) the terms of coverage under the insured's insurance plan with the insurer, to ensure that the external review organization's decision is not contrary to the terms of coverage under the insured's insurance plan with the insurer;
- (5) the most appropriate practice guidelines, including generally accepted practice guidelines, evidence-based practice guidelines, or any other practice guidelines developed by the federal government and national or professional medical societies, boards, and associations; and
- (6) any applicable clinical review criteria developed and used by the insurer or its designee utilization review organization.

(h) Within 30 business days after the date of receipt of the request for external review, the assigned external review organization shall provide written notice of its decision to uphold or reverse the adverse decision to the following:

- (1) The insured or the insured's authorized representative;
- (2) the insurer; and

(3) the commissioner.

(i) The external review organization shall include the following in the notice sent pursuant to subsection (h) ~~of this regulation~~:

- (1) A general description of the reason for the request for external review;
- (2) the date the external review organization received the assignment from the commissioner to conduct the external review;
- (3) the date the external review was conducted;
- (4) the date of the external review organization's decision;
- (5) the principal reason or reasons for the external review organization's decision;
- (6) the rationale for the external review organization's decision; and
- (7) references, as needed, to the evidence or documentation, including the practice guidelines that the external review organization considered in reaching its decision.

~~This regulation shall take effect on and after January 1, 2000. (Authorized by K.S.A. 40-103 and L. 1999, Ch. 162, §9 40-22a16; implementing L. 1999, Ch. 162, §§ 6 —9 K.S.A. 40-22a13, 40-22a14, 40-22a15, and 40-22a16; effective Jan. 7, 2000; amended P-_____.)~~

ECONOMIC IMPACT STATEMENT

Proposed Kansas Administrative Regulation 40-4-42c

Pursuant to K.S.A. 2010 Supp. 77-416(b) the Kansas Insurance Department (KID) submits the following description of the economic impact of the above referenced proposed amendment to K.A.R. 40-4-42c:

1. This proposed amendment clarifies to whom notice must be given about providing additional information for an external review organization to consider when reviewing denials of coverage for experimental or medically unnecessary procedures. The proposed amendment would also specify that external review organizations must forward a copy of any additional information provided to the insurer or its designee.

2. Any external review organization not already complying with the proposed amendment would have minimal economic impact resulting from forwarding the specified information.

3. There will be little or no economic impact on the Kansas Insurance Department, consumers, small businesses, or other governmental agencies.